

CHAPTER 47 PROCEDURES FOR DECISION MAKING

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4700 GENERAL PROVISIONS

- 4700.1 This chapter shall contain procedures for issuing, modifying, suspending, reissuing, or revoking all treatment, storage and disposal permits other than "emergency permits" (see §4605.1) and "permits by rule" (see §§4605.2 through 4605.3). Interim status is covered by specific provisions in §4606.
- 4700.2 This chapter shall describe the steps the Department will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. This chapter also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §6 of the District of Columbia Hazardous Waste Management Act of 1977, as amended, D.C. Law 2-64, D.C. Code §6-701 *et seq.* (1995 Repl. Vol.), Mayor's Order 78-185 dated September 19, 1978.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4701 APPLICATION FOR A PERMIT

- 4701.1 Any person who requires a permit as specified in §§4600.1 through 4600.9 shall complete, sign, and submit to the Director an application for each permit. Applications are not required for permits-by-rule.
- 4701.2 The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit (see §§4601.1 through 4601.16 and 4601.23 through 4601.31).
- 4701.3 Permit applications shall comply with the signature and certification requirements of §§4601.17 through 4601.20.
- 4701.4 The Director shall review for completeness every application. Each application submitted by a new HWM facility shall be reviewed for completeness by the Director within thirty (30) days of its receipt. Each application for a permit submitted by an existing HWM facility (both Parts A and B of the application) shall be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Director shall notify the applicant in writing whether

the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for additional information will not render an application incomplete.

- 4701.5 If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision including HWMA, §12(a).
- 4701.6 If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.
- 4701.7 The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in §4701.4.
- 4701.8 For each application from a new HWM facility, the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to do the following:
- (a) Prepare a draft permit;
 - (b) Give public notice;
 - (c) Complete the public comment period, including any public hearing; and
 - (d) Issue a final permit.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4702 MODIFICATION, SUSPENSION AND REISSUANCE, OR REVOCATION OF A PERMIT

- 4702.1 A permit may be modified, suspended and reissued or revoked as follows:
- (a) Permits may be modified, suspended and reissued, or revoked either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, suspended and reissued, or revoked for the reasons specified in §§4603.2 through 4603.5 or §§4603.7 through 4603.8. All requests shall be in writing and shall contain facts or reasons supporting the request;
 - (b) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of request for modification, suspension and reissuance, or revocation are not subject to public notice, comment, or hearings. Denials by the Director may be appealed to the Mayor by a letter briefly setting forth the relevant facts. The Mayor may direct the Director to begin modification, suspension and reissuance, or revocation proceedings under §4702.1(c). The appeal shall be considered denied if the Mayor takes no action on the letter within

sixty (60) days after receiving it. This appeal is a prerequisite to seeking judicial review of action in denying a request for modification, suspension and reissuance or revocation;

- (c) Procedures for modification, suspension and reissuance, or revocation of permits shall be as follows:
 - (1) If the Director tentatively decides to modify or suspend and reissue a permit under §§4603.2 through 4603.5, he or she shall prepare a draft permit under §4702.2 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a suspended and reissued permit, the Director shall require the submission of a new application;
 - (2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is suspended and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any suspension and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued; and
 - (3) "Minor modifications" as defined in §4603.6 are not subject to the requirements of this section; and
- (d) If the Director tentatively decides to revoke a permit under §§4603.7 and 4603.8, he or she shall issue a notice of intent to revoke. A notice of intent to revoke is a type of draft permit which follows the same procedures as any draft permit prepared under §4702.2.

4702.2 The procedures for preparing draft permits shall be:

- (a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit, or to deny the application;
- (b) If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under §4702.2(e). If the Director's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under §4702.2(d);
- (c) [Reserved];
- (d) If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:
 - (1) All conditions under §§4602.1 and 4602.3 through 4602.8;
 - (2) All compliance schedules under §§4602.9 through 4602.11;
 - (3) All monitoring requirements under §4602.2; and

- (4) Standards for treatment, storage, disposal and other permit conditions under §4602.1;
 - (e) All draft permits prepared under this section shall be accompanied by a fact sheet (§§4702.3 and 4702.4), and shall be publicly noticed (§§4703.1 through 4703.6) and made available for public comment (§4704.1); and
 - (f) The Director shall give notice of opportunity for a public hearing (§§4704.2 through 4704.6), respond to comments (§4704.7) and issue a final decision.
- 4702.3 A fact sheet shall be prepared for every draft permit for a HWM facility. The fact sheet shall briefly set forth the principal facts and the significant factual legal methodology and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant, persons on the mailing list and, on request, to any other person.
- 4702.4 The fact sheet shall include the following, when applicable:
- (a) A brief description of the type of facility or activity which is the subject of the draft permit;
 - (b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored or disposed of;
 - (c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
 - (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
 - (e) A description of the procedures for reaching a final decision on the draft permit including the following:
 - (1) The beginning and ending dates of the comment period under §§4703.1 through 4703.6 and the address where comments will be received;
 - (2) Procedures for requesting a hearing and the nature of that hearing; and
 - (3) Any other procedures by which the public may participate in the final decision; and
 - (f) Name and telephone number of a person to contact for additional information.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4703 PUBLIC NOTICE OF PERMIT ACTIONS

4703.1 The provisions for public notice of permit actions shall be as follows:

- (a) The Director shall give public notice that the following actions have occurred:
 - (1) A permit application has been tentatively denied under §4702.2(b);

- (2) A draft permit has been prepared under §4702.2(d); and
 - (3) A hearing has been scheduled under §§4704.12 through 4704.6.
 - (b) No public notice is required when a request for permit modification, suspension and reissuance, or revocation is denied under §4702.1(b). Written notice of that denial shall be given to the requester and to the permittee; and
 - (c) Public notices may describe more than one permit or permit action.
- 4703.2 Timing for public notice shall be as follows:
- (a) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under §4703.1 shall allow at least forty-five (45) days for public comment; and
 - (b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined).
- 4703.3 Public notice of activities described in §4703.1(a) shall be given by the following methods:
- (a) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this section may waive his or her rights to receive notice for any classes and categories of permits):
 - (1) The applicant;
 - (2) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity (including the U.S. EPA);
 - (3) Federal and District agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, D.C. Historic Preservation Officers, and other appropriate government authorities;
 - (4) Persons on a mailing list developed by:
 - (A) Including those who request in writing to be on the list;
 - (B) Soliciting person for "area lists" from participants in past permit proceedings in that area; and
 - (C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as District funded newsletters, environmental bulletins, or District law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list, the name of any person who fails to respond to a request.);
 - (5) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

- (6) To each District agency having any authority under District law with respect to the construction or operation of the facility;
 - (b) Publication of a notice in a daily or weekly newspaper within the area affected by the facility and in the *District of Columbia Register* and broadcast of the notice over local radio stations;
 - (c) In a manner constituting legal notice to the public under District law; and
 - (d) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- 4703.4 All public notices issued under this section shall contain the following minimum information:
- (a) Name and address of the office processing the permit action for which notice is being given;
 - (b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
 - (c) A brief description of the business conducted at the facility or activity described in the permit application;
 - (d) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application;
 - (e) A brief description of the comment procedure required by §§4704.1 through 4704.6 and the time and place of any hearing that will be held including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and
 - (f) Any additional information considered necessary or proper.
- 4703.5 In addition to the general public notice described in §4703.4, the public notice of a hearing under §§4704.3 through 4704.6 shall contain the following information:
- (a) Reference to the date of previous public notices relating to the permit;
 - (b) Date, time, and place of the hearing; and
 - (c) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
- 4703.6 In addition to the general public notice described in §4703.4, all persons identified in §4703.3(a) shall be mailed a copy of the fact sheet, and the draft permit (if any).

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4704 PUBLIC HEARINGS

- 4704.1 During the public comment period provided under §§4703.1 through 4703.6, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.
- 4704.2 Provisions for public hearings shall be as follows:
- (a) The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit;
 - (b) The Director may also hold a public hearing, at his or her discretion, whenever, for instance, a hearing might clarify one (1) or more issues involved in the permit decision;
 - (c) The Director shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under §4703.2(a);
 - (d) Whenever possible, the Director shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility; and
 - (e) Public notice of the hearing shall be given as specified in §§4703.1 through 4703.6.
- 4704.3 Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.
- 4704.4 The public comment period under §§4703.1 through 4703.6 shall automatically be extended to the close of any public hearing under this chapter. The hearing officer may also extend the comment period by so stating at the hearing.
- 4704.5 All comments shall be considered in making the final decision and shall be answered as provided in §4704.6.
- 4704.6 A tape recording or written transcript of the hearing shall be made available to the public.
- 4704.7 The Director shall issue a response to comments when a final permit is issued. This response shall:
- (a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change;
 - (b) Briefly describe and respond to all significant comments raised during the public comment period, or during any hearing; and
 - (c) Be available to the public.

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